

CHAPTER 24:05:32

VOLUNTARY ENROLLMENT IN NONPUBLIC SCHOOLS

Section

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24:05:32:01. Responsibility of ~~division~~ department. The ~~division~~ department is responsible for ensuring the participation of eligible parentally-placed private school children in the program assisted or carried out under this article consistent with their number and location by providing them with special education and related services in accordance with this chapter including direct services, unless the U.S. Secretary of Education has arranged for services under the by-pass procedures in Part B of IDEA. The ~~division~~ department shall ensure that a services plan is developed and implemented for each private school child with a disability who has been designated by the district in which a private school is located to receive special education and related services under this chapter. For purposes of this chapter, the term, parentally-placed private school children with disabilities, means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the state definition of

elementary school or secondary school, other than children with disabilities covered under chapter 24:05:31.

Source: 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:32:01.01. Child find. Each district shall establish a child find process to locate, identify, and evaluate all private school children with disabilities, including religious elementary and secondary school children and children receiving alternative instruction under SDCL 13-27-3 in schools located in the school district served by the district ~~residing in the jurisdiction of the district in accordance with this article.~~ The activities undertaken to carry out the responsibility for private school children with disabilities must be similar comparable to activities undertaken for children with disabilities in public schools. ~~Each district shall consult with appropriate representatives of private school children with disabilities on how to carry out the activities described in this article.~~

The child find process shall be designed to ensure:

(1) The equitable participation of parentally-placed private school children; and

(2) An accurate count of those children.

The child find process shall be completed in a time period comparable to that for students attending public schools in the district consistent with this article.

Each school district in which private, including religious, elementary schools and secondary schools are located shall, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a state other than the state in which the private schools that they attend are located.

Each school district shall maintain in its records, and provide to the department, the following information related to parentally-placed private school children covered under this chapter: the number of children evaluated; the number of children determined to be children with disabilities; and the number of children served.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:32:01.02. Expenditures. To meet the requirements of § 24:05:32:01, each school district must spend the following amounts on providing special education and related services including direct services to parentally-placed private school children with disabilities:

(1) For children aged 3 to 21, inclusive, an amount that is the same proportion of the school district's total subgrant under Part B of the Individuals with Disabilities Education Act as the number of private school children with disabilities aged 3 to 21, inclusive, residing in its jurisdiction who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the district is to the total number of children with disabilities in its jurisdiction aged 3 to 21, inclusive; and

(2) For children aged 3 to 5, inclusive, an amount that is the same proportion of the school district's total subgrant under Section 619, Preschool, of the Individuals with Disabilities Education Act as the number of private school children with disabilities aged 3 to 5, inclusive, residing in its jurisdiction as who are enrolled by their parents in private, including religious, elementary schools located in the school district served by the district is to the total number of children with disabilities in its jurisdiction aged 3 to 5, inclusive.

If a district has not expended for equitable services all of the funds described in this section by the end of the fiscal year for which Congress appropriated the funds, the district shall obligate the remaining funds for special education and related services, including direct services, to parentally-placed private school children with disabilities during a carry-over period of one additional year.

In calculating the proportionate amount of federal funds to be provided for parentally-placed private school children with disabilities, the district, after timely and meaningful consultation with representatives of private schools, shall conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the district.

State and local funds may supplement and in no case supplant the proportionate amount of federal funds required to be expended for parentally-placed private school children with disabilities under this chapter.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:32:01.03. Child count. Each school district shall:

(1) After timely and meaningful consultation ~~Consult~~ with representatives of parentally-placed private school children, determine the number of eligible children attending private schools located in the district ~~in deciding how to conduct the annual count of the number of private school children with disabilities;~~ and

(2) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

The child count must be used to determine the amount that the school district must spend on providing special education and related services to private school children with disabilities in the next subsequent fiscal year. Expenditures for child find activities

described in § 24:05:32:01.01, including individual evaluations, may not be considered in determining whether the school district or other public agency has met the requirements of § 24:05:32:01.02. State and local educational agencies are not prohibited from providing services to private school children with disabilities in excess of those required by this section consistent with state law or local policy.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:32:01.04. No individual right to special education and related services.

No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. Decisions about the services that will be provided to eligible private school children with disabilities under this chapter must be made in accordance with § 24:05:32:03 §§ 24:05:32:01.06 and 24:05:32:03.01. The school district shall make the final decisions with respect to the services to be provided to eligible parentally-placed private school children.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:32:01.05. Consultation. To ensure timely and meaningful consultation, a school district, or, if appropriate, the department shall consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

- (1) The child find process, including:
 - (a) How parentally-placed private school children suspected of having a disability can participate equitably; and
 - (b) How parents, teachers, and private school officials will be informed of the process;
- (2) The determination of the proportionate share of federal funds available to serve parentally-placed private school children with disabilities under this chapter, including the determination of how the proportionate share of those funds was calculated;
- (3) The consultation process among the district, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;

(4) How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of:

(a) The types of services, including direct services and alternate service delivery mechanisms;

(b) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and

(c) How and when those decisions will be made; and

(5) How, if the district disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the district will provide to the private school officials a written explanation of the reasons why the district chose not to provide services directly or through a contract.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:32:01.06. Written affirmation. When timely and meaningful consultation, as required by § 24:05:32:01.05, has occurred, the district shall obtain a written affirmation signed by the representatives of participating private schools.

If the representatives do not provide the affirmation within a reasonable period of time, the district shall forward the documentation of the consultation process to the department.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:32:01.07. Compliance. A private school official has the right to submit a complaint to the department that the school district did not engage in consultation that was meaningful and timely or did not give due consideration to the views of the private school official.

If the private school official wishes to submit a complaint, the official shall provide to the department the basis of the noncompliance by the district with the applicable private school provisions in this chapter. The district shall forward the appropriate documentation regarding its consultation process to the department.

If the private school official is dissatisfied with the decision of the department, the official may submit a complaint to the U.S. secretary of education by providing the information on noncompliance described in this section. The department shall forward

the appropriate documentation regarding the state's decision on the complaint to the U.S. secretary of education.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:32:03. Consideration of benefits by school districts. ~~A school district shall consult in a timely and meaningful way, with appropriate representatives of eligible students enrolled in private schools in light of the funding under § 24:05:32:01.01, regarding the number of private school children with disabilities, the needs of these children, and their location to decide:~~

- ~~(1) Which children will receive services under the § 24:05:32:01;~~
- ~~(2) What services will be provided;~~
- ~~(3) How and where the services will be provided; and~~
- ~~(4) How the services will be evaluated.~~

~~Each school district shall give appropriate representatives of private school children with disabilities a genuine opportunity to express their views regarding each matter that is subject to the consultation requirement. The consultation shall occur before the school district makes any decision that affects the opportunities of eligible private school children to participate in services under this chapter. The school district shall make the final decision with respect to the services to be provided to eligible private school children~~ Repealed.

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:32:03.02. Services provided. The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities are not required to meet the highly qualified special education teacher requirements of this article. Private school children with disabilities may receive a different amount of services than children with disabilities in public schools. No private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school. Each private school child with a disability who has been designated to receive services under this chapter, must have a services plan that describes the specific special education and related services that the district will provide to the child in light of the services that the district has determined, through the process described in this chapter, it will make available to private school children with disabilities. The services plan must to the extent appropriate:

- (1) Meet the IEP content requirements with respect to the services provided; and
- (2) Be developed, reviewed, and revised consistent with the IEP provisions in this article.

The provision of services pursuant to this chapter shall be provided by employees of a school district, or through contract by the school district with an individual, association, agency, organization, or other entity.

Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:32:03.03. Location of services and transportation. Services provided to eligible parentally-placed private school children may be provided on the premises of ~~on-site at~~ a child's private school, including a religious school, to the extent consistent with state law. If necessary for the child to benefit from or participate in the services provided under this chapter, a private school child with a disability must be provided transportation:

- (1) From the child's school or the child's home to a site other than the private school; and
- (2) From the service site to the private school, or to the child's home, depending on the timing of the services.

Districts are not required to provide transportation from the child's home to the private school. The cost of transportation described in this section may be included in calculating whether the district has met the requirement of § 24:05:32:01.02.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:32:03.04. Complaints. The due process hearing and mediation procedures in chapter 24:05:30 do not apply to complaints that a school district has failed to meet the requirements of this chapter, including the provision of services indicated on the child's service plan ~~individualized education program~~. The due process hearing and mediation procedures in chapter 24:05:30 apply to complaints that the district has failed to meet the child find requirements in § 24:05:32:01.01, including the parent consent and evaluation requirements in this article. Any due process complaint regarding the child find requirements shall be filed with the school district in which the private school is located and a copy shall be forwarded to the department. Complaints that the ~~division~~ department or a school district has failed to meet the requirements of this chapter may be filed under the procedures in chapter 24:05:15 consistent with the procedures in 24:05:32:01.07.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:32:12. Proscribed use of funds for benefit of private school. A school district may not use IDEA Section 619 Preschool or Part B funds to finance the existing level of instruction in a private school or to otherwise benefit the private school. The school district shall use funds provided under Part B of the Individuals with Disabilities Education Act to meet the special education and related services needs of students enrolled in private schools, but not for:

- (1) The needs of a private school; or
- (2) The general needs of the students enrolled in the private school.

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:32:15. School district to maintain control of property, equipment, and supplies. ~~A school district must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the school district acquires with program funds under Section 619 Preschool or Part B of the Individuals with Disabilities Education Act for the benefit of eligible private school children.~~

A school district shall control and administer the funds used to provide special education and related services under this chapter, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in Part B of the IDEA.

The school district may place equipment and supplies in a private school for the period of time needed for the Part B program.

The school district shall ensure that the equipment and ~~or~~ supplies placed in a private school are used only for the purposes of the Part B program and can be removed from the private school without remodeling the private school facilities.

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:32:16. Equipment and supplies to be removed from private schools upon cessation of need. The school district shall remove equipment ~~or~~ and supplies from a private school if the equipment ~~or~~ and supplies are no longer needed for the purposes of

the program ~~or~~ authorized under Part B of the IDEA or if removal is necessary to avoid unauthorized use of the equipment or supplies for other than Part B program purposes.

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.